

109TH CONGRESS
1ST SESSION

S. 137

To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2005

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To modify the contract consolidation requirements in the Small Business Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Fed-
5 eral Contractor Safeguard Act of 2005”.

6 **SEC. 2. CONTRACT CONSOLIDATION.**

7 (a) DEFINITIONS.—Section 3(o) of the Small Busi-
8 ness Act (15 U.S.C. 632(o)) is amended to read as follows:

9 “(o) DEFINITIONS RELATING TO CONSOLIDATION OF
10 CONTRACT REQUIREMENTS.—For purposes of this Act—

1 “(1) the terms ‘consolidation of contract re-
2 quirements’ and ‘consolidation’, with respect to con-
3 tract requirements of a military department, De-
4 fense Agency, Department of Defense Field Activity,
5 or any other Federal department or agency having
6 contracting authority mean a use of a solicitation to
7 obtain offers for a single contract or a multiple
8 award contract to satisfy 2 or more requirements of
9 that department, agency, or activity for goods or
10 services that—

11 “(A) have previously been provided to or
12 performed for that department, agency, or ac-
13 tivity under 2 or more separate contracts that
14 are smaller in cost than the total cost of the
15 contract for which the offers are solicited; or

16 “(B) are of a type capable of being pro-
17 vided or performed by a small business concern
18 for that department, agency, or activity under
19 2 or more separate contracts that are smaller in
20 cost than the total cost of the contract for
21 which the offers are solicited;

22 “(2) the term ‘multiple award contract’
23 means—

24 “(A) a contract that is entered into by the
25 Administrator of General Services under the

multiple award schedule program referred to in section 2302(2)(C) of title 10, United States Code;

“(B) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

“(C) any other indeterminate delivery, indeterminate quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation; and

“(3) the term ‘senior procurement executive’ means—

“(A) with respect to a military department, the official designated under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) as the senior procurement executive for the military department;

“(B) with respect to a Defense Agency or a Department of Defense Field Activity, the of-

1 ficial so designated for the Department of De-
2 fense; and

3 “(C) with respect to a Federal department
4 or agency other than those referred to in sub-
5 paragraphs (A) and (B), the official so des-
6 ignated by that department or agency.”.

7 (b) PROCUREMENT STRATEGIES.—Section 15(e) of
8 the Small Business Act (15 U.S.C. 644(e)) is amended—

9 (1) in paragraph (2)—

10 (A) by striking “.—

11 “(A) IN GENERAL ”; and

12 (B) by striking subparagraphs (B) and
13 (C); and

14 (2) by amending paragraph (3) to read as fol-
15 lows:

16 “(3) LIMITATION ON USE OF ACQUISITION
17 STRATEGIES INVOLVING CONSOLIDATION.—

18 “(A) CERTAIN DEFENSE CONTRACT RE-
19 QUIREMENTS.—An official of a military depart-
20 ment, defense agency, or Department of De-
21 fense Field Activity shall not execute an acqui-
22 sition strategy that includes a consolidation of
23 contract requirements of the military depart-
24 ment, agency, or activity with a total value in

1 excess of \$5,000,000, unless the senior procure-
2 ment executive first—

3 “(i) conducts market research;

4 “(ii) identifies any alternative con-
5 tracting approaches that would involve a
6 lesser degree of consolidation of contract
7 requirements; and

8 “(iii) determines that the consolida-
9 tion is necessary and justified.

10 “(B) CERTAIN CIVILIAN AGENCY CON-
11 TRACT REQUIREMENTS.—The head of a Federal
12 agency not described in subparagraph (A) that
13 has contracting authority shall not execute an
14 acquisition strategy that includes a consolida-
15 tion of contract requirements of the agency with
16 a total value in excess of \$2,000,000, unless the
17 senior procurement executive of the agency
18 first—

19 “(i) conducts market research;

20 “(ii) identifies any alternative con-
21 tracting approaches that would involve a
22 lesser degree of consolidation of contract
23 requirements; and

24 “(iii) determines that the consolida-
25 tion is necessary and justified.

“(C) ADDITIONAL REQUIREMENTS FOR
HIGHER VALUE CONSOLIDATED CONTRACTS.—

In addition to meeting the requirements under
subparagraph (A) or (B), a procurement strat-
egy by a civilian agency that includes a consoli-
dated contract valued at more than \$5,000,000,
or by a defense agency that includes a consoli-
dated contract valued at more than \$7,000,000
shall include—

“(i) an assessment of the specific im-
pediments to participation by small busi-
ness concerns as prime contractors that
will result from the consolidation;

“(ii) the identification of the alter-
native strategies that would reduce or min-
imize the scope of the consolidation and
the rationale for not choosing those alter-
natives;

“(iii) actions designed to maximize
small business participation as prime con-
tractors, including provisions that encour-
age small business teaming for the consoli-
dated requirement; and

“(iv) actions designed to maximize
small business participation as subcontrac-

tors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

“(D) NECESSARY AND JUSTIFIED.—A senior procurement executive may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for purposes of subparagraph (A), (B), or (C), if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under clause (ii) of any of those subparagraphs, as applicable. Savings in administrative or personnel costs alone shall not constitute, for such purpose, a sufficient justification for a consolidation of contract requirements in a procurement, unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

“(E) BENEFITS.—Benefits considered for purposes of this paragraph may include cost and, regardless of whether quantifiable in dollar amounts—

“(i) quality;

1 “(ii) acquisition cycle;
 2 “(iii) terms and conditions; and
 3 “(iv) any other benefit directly related
 4 to national security or homeland defense.”.

5 (c) ADDITIONAL TO TECHNICAL ADVISERS.—Section
 6 15(k) of the Small Business Act (15 U.S.C. 644(k)) is
 7 amended—

8 (1) in paragraph (5), by striking “bundled con-
 9 tract” and inserting “consolidated contract”; and

10 (2) in paragraph (8), by striking “representa-
 11 tive—” and inserting “representative at each major
 12 procurement center under subsection (l)(1)—”.

13 (d) PROCUREMENT CENTER REPRESENTATIVES.—
 14 Section 15(l) of the Small Business Act (15 U.S.C. 644(l))
 15 is amended—

16 (1) by redesignating paragraphs (2) through
 17 (7) as paragraphs (3) through (8), respectively;

18 (2) by striking “(l)(1)” and inserting “(2)”;

19 (3) by inserting before paragraph (2), as redес-
 20 igned, the following:

21 “(l)(1) The Administration shall assign not fewer
 22 than 1 procurement center representative at each major
 23 procurement center, in addition to not fewer than 1 for
 24 each State.”;

1 (4) in paragraph (2), as redesignated, by strik-
 2 ing “to the representative referred to in subsection
 3 (k)(6)” and inserting “to the traditional procure-
 4 ment center representative and the commercial mar-
 5 ket representative, with each such position filled by
 6 a different individual, and each such representative
 7 having separate and distinct duties and responsibil-
 8 ities.”; and

9 (5) by striking “paragraph (2)” each place that
 10 term appears and inserting “paragraph (3)”.

11 (e) REPORT REQUIREMENTS.—Section 15(p)(4)(B)
 12 of the Small Business Act (15 U.S.C. 644(p)(4)(B)) is
 13 amended—

14 (1) in clause (i), by striking “and” at the end;

15 (2) in clause (ii), by striking the period at the
 16 end and inserting the following: “; and”; and

17 (3) by adding at the end the following:

18 “(iii) a description of best practices
 19 for maximizing small business prime and
 20 subcontracting opportunities.”.

21 (f) CONFORMING AMENDMENTS.—Section 15(p) of
 22 the Small Business Act (15 U.S.C. 644(p)) is amended—

23 (1) in the subsection heading, by striking
 24 “BUNDLED CONTRACTS” and inserting “CONSOLI-
 25 DATED CONTRACTS”;

1 (2) in the heading to paragraph (1), by striking
 2 “BUNDLED CONTRACT” and inserting “CONSOLI-
 3 DATED CONTRACT”;

4 (3) in the heading to paragraph (4), by striking
 5 “CONTRACT BUNDLING” and inserting “CONTRACT
 6 CONSOLIDATION”;

7 (4) by striking “bundled contracts” each place
 8 that term appears and inserting “consolidated con-
 9 tracts”;

10 (5) by striking “bundled contract” each place
 11 that term appears and inserting “consolidated con-
 12 tract”;

13 (6) by striking “bundling of contract require-
 14 ments” each place that term appears and inserting
 15 “consolidation of contract requirements”;

16 (7) in paragraph (4)(B)(ii), by striking “pre-
 17 viously bundled” and inserting “previously consoli-
 18 dated”;

19 (8) in paragraph (4)(B)(ii)(I), by striking
 20 “were bundled” and inserting “were consolidated”;

21 (9) in paragraph (4)(B)(ii)(II)(bb), by striking
 22 “bundling the contract requirements” and inserting
 23 “the consolidation of contract requirements”; and

1 (10) in paragraph (4)(B)(ii)(II)(cc), by striking
2 “bundled status” and inserting “consolidated sta-
3 tus”.

4 **SEC. 3. AGENCY ACCOUNTABILITY.**

5 (a) IN GENERAL.—Each procurement employee—

6 (1) shall communicate to their subordinates the
7 importance of achieving small business goals; and

8 (2) shall have as an annual performance evalua-
9 tion factor, if appropriate, the success of that pro-
10 curement employee in small business utilization, in
11 accordance with the goals established under this sec-
12 tion.

13 (b) DEFINITION.—As used in this section, the term
14 “procurement employee” means a senior procurement ex-
15 ecutive, senior program manager, or small and disadvan-
16 taged business utilization manager of a Federal agency
17 having contracting authority.

18 **SEC. 4. SMALL BUSINESS PARTICIPATION IN PRIME CON-**
19 **TRACTING.**

20 (a) RESERVED CONTRACTS.—Section 15(j) of the
21 Small Business Act (15 U.S.C. 644(j)) is amended by add-
22 ing at the end the following:

23 “(4) Any adjustment to the simplified acquisition
24 threshold (as defined in section 4(11) of the Office of Fed-
25 eral Procurement Policy Act (41 U.S.C. 403(11))), shall

1 be immediately matched by an identical adjustment to the
 2 small business reserve for purposes of this subsection.”.

3 (b) PARTICIPATION IN MULTIPLE AWARD CON-
 4 TRACTS.—Section 15(j) of the Small Business Act (15
 5 U.S.C. 644(j)) is amended—

6 (1) in paragraph (2), by striking “(2) In car-
 7 rying out paragraph (1)” and inserting “(3) In car-
 8 rying out paragraphs (1) and (2)”;

9 (2) in paragraph (3), by striking “(3) Nothing
 10 in paragraph (1)” and inserting “(4) Nothing in this
 11 subsection”; and

12 (3) by inserting after paragraph (1) the fol-
 13 lowing:

14 “(2)(A) In the case of orders under multiple award
 15 contracts, including Federal Supply Schedule contracts
 16 and multi-agency contracts, that are subject to the small
 17 business reserve, contracting officers shall consider not
 18 fewer than 2 small business concerns if such small busi-
 19 ness concerns can offer the items sought by the con-
 20 tracting officer on competitive terms, with respect to price,
 21 quality, and delivery schedule, with the goods or services
 22 available in the market.

23 “(B) If only 1 small business concern can satisfy the
 24 requirement, the contracting officer shall include such
 25 small business concern in their evaluation.”.

1 (c) REPORT REQUIREMENT.—

2 (1) IN GENERAL.—Not less than once every
3 180 days, the Comptroller General of the United
4 States shall submit a report on the level of participa-
5 tion in multiple award contracts, including the Fed-
6 eral Supply Schedule to—

7 (A) the Small Business Administration;

8 (B) the Committee on Small Business and
9 Entrepreneurship of the Senate; and

10 (C) the Committee on Small Business of
11 the House of Representatives.

12 (2) CONTENTS.—Each report submitted under
13 paragraph (1) shall contain, for the 6-month report-
14 ing period—

15 (A) the total number of multiple award
16 contracts;

17 (B) the total number of small business
18 concerns that received multiple award contracts;

19 (C) the total number of orders;

20 (D) the total value of orders;

21 (E) the number of orders received by small
22 business concerns;

23 (F) the value of orders received by small
24 business concerns;

- 1 (G) the number of small business concerns
 2 that received orders; and
 3 (H) such other information that the Comp-
 4 troller General considers relevant.

5 **SEC. 5. SMALL BUSINESS PARTICIPATION IN SUBCON-**
 6 **TRACTING.**

7 (a) CERTIFICATIONS REQUIRED.—Section 8(d)(6) of
 8 the Small Business Act (15 U.S.C. 637(d)(6)) is amend-
 9 ed—

10 (1) in subparagraph (E), by striking “and” at
 11 the end;

12 (2) in subparagraph (F), by striking the period
 13 at the end and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(G) certification that the offeror or bidder will
 16 acquire articles, equipment, supplies, services, or
 17 materials, or obtain the performance of construction
 18 work from small business concerns in the amount
 19 and quality used in preparing the bid or proposal,
 20 unless such small business concerns are no longer in
 21 business or can no longer meet the quality, quantity,
 22 or delivery date.”.

23 (b) PENALTIES FOR FALSE CERTIFICATIONS.—Sec-
 24 tion 16(f) of the Small Business Act (15 U.S.C. 645(f))

1 is amended by striking “of this Act” and inserting “or
2 the reporting requirements of section 8(d)(11)”.

3 **SEC. 6. EVALUATING SUBCONTRACT PARTICIPATION IN**
4 **AWARDING CONTRACTS.**

5 (a) **SIGNIFICANT FACTORS.**—Section 8(d)(4)(G) of
6 the Small Business Act (15 U.S.C. 637(d)(4)(G)) is
7 amended by striking “a bundled” and inserting “any”.

8 (b) **EVALUATION REPORTS.**—Section 8(d)(10) of the
9 Small Business Act (15 U.S.C. 637(d)(10)) is amended—

10 (1) by striking “is authorized to” and inserting
11 “shall”;

12 (2) in subparagraph (B), by striking “and” at
13 the end;

14 (3) in subparagraph (C), by striking the period
15 at the end and inserting “; and”; and

16 (4) by adding at the end the following:

17 “(D) report the results of each evaluation under
18 subparagraph (C) to the appropriate contracting of-
19 ficers.”.

20 (c) **CENTRALIZED DATABASE; PAYMENTS PENDING**
21 **REPORTS.**—Section 8(d) of the Small Business Act (15
22 U.S.C. 637(d)) is amended—

23 (1) by redesignating paragraph (11) as para-
24 graph (14); and

1 (2) by inserting after paragraph (10) the fol-
2 lowing:

3 “(11) CERTIFICATION.—A report submitted by the
4 prime contractor pursuant to paragraph (6)(E) to deter-
5 mine the attainment of a subcontract utilization goal
6 under any subcontracting plan entered into with a Federal
7 agency under this subsection shall contain the name and
8 signature of the president or chief executive officer of the
9 contractor, certifying that the subcontracting data pro-
10 vided in the report are accurate and complete.

11 “(12) CENTRALIZED DATABASE.—The results of an
12 evaluation under paragraph (10)(C) shall be included in
13 a national centralized governmentwide database.

14 “(13) PAYMENTS PENDING REPORTS.—Each Federal
15 agency having contracting authority shall ensure that the
16 terms of each contract for goods and services includes a
17 provision allowing the contracting officer of an agency to
18 withhold an appropriate amount of payment with respect
19 to a contract (depending on the size of the contract) until
20 the date of receipt of complete, accurate, and timely sub-
21 contracting reports in accordance with paragraph (11).”.

22 (d) REFERRAL OF MATERIAL BREACH TO INSPEC-
23 TORS GENERAL.—Section 8(d)(8) of the Small Business
24 Act (15 U.S.C. 637(d)(8)) is amended by adding at the
25 end the following: “A material breach described in this

1 paragraph shall be referred for investigation to the Inspec-
 2 tor General (or the equivalent) of the affected agency.”.

3 **SEC. 7. BUSINESSLINC REPORT TO CONGRESS.**

4 Section 8(n) of the Small Business Act (15 U.S.C.
 5 637(n)) is amended—

6 (1) by redesignating paragraph (3) as para-
 7 graph (4); and

8 (2) by adding after paragraph (2) the following:

9 “(3) ANNUAL REPORT.—

10 “(A) IN GENERAL.—The Associate Admin-
 11 istrator of Business Development of the Admin-
 12 istration shall collect data on the
 13 BusinessLINC program and submit an annual
 14 report by April 30 of each year on the effective-
 15 ness of the program to the Committee on Small
 16 Business and Entrepreneurship of the Senate
 17 and the Committee on Small Business of the
 18 House of Representatives.

19 “(B) CONTENTS.—The report submitted
 20 under subparagraph (A) shall include—

21 “(i) the number of programs adminis-
 22 tered in each State;

23 “(ii) the corresponding grant awards
 24 and the date of each award;

1 “(iii) the dollar amount of the con-
2 tracts in effect in each State as a result of
3 the BusinessLINC program; and

4 “(iv) the number of teaming arrange-
5 ments or partnerships created as a result
6 of the BusinessLINC program.”.

○